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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 RED.COM, LLC, a Nevada limited
12 liability company,

13 Plaintiff,

14 v.

15 NIKON CORPORATION, a Japanese
16 corporation and NIKON INC., a New
York corporation,

17 Defendants.
18
19

Case No. 8:22-cv-01048-FWS-JDE

**STIPULATED PROTECTIVE
ORDER**

[Note Changes by the Court]

20 Based on the Parties' Stipulation (Dkt. 26), the filings in this action, and the
21 applicable authorities, and for good cause shown, the Court finds and orders as
22 follows.

23 1. PURPOSES AND LIMITATIONS

24 Disclosure and discovery activity in this action are likely to involve
25 production of confidential, proprietary, or private information for which special
26 protection from public disclosure and from use for any purpose other than
27 prosecuting this litigation may be warranted including confidential and proprietary
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1 business research and financial information that may be privileged or otherwise
2 protected from public disclosure under applicable authorities. Accordingly, to
3 expedite the flow of information, to facilitate the prompt resolution of disputes over
4 confidentiality of discovery materials, to adequately protect information the parties
5 are entitled to keep confidential, to ensure that the parties are permitted reasonably
6 necessary uses of such material in preparation for trial, to address their handling at
7 the end of the litigation, and serve the ends of justice, a protective order for such
8 information is justified in this matter. Information may not be designated under this
9 order solely for tactical reasons and nothing may be so designated without a good
10 faith belief that it has been maintained in a confidential, non-public manner, and
11 there is good cause why it should not be part of the public record of this case. This
12 Order does not confer blanket protections on all disclosures or responses to
13 discovery and the protection it affords from public disclosure and use extends only
14 to the limited information or items that are entitled to confidential treatment under
15 the applicable legal principles.

16 As set forth in Section 13.3 below, that this Stipulated Protective Order does
17 not entitle the Parties to file confidential information under seal; Civil Local Rule
18 79-5 sets forth the procedures that must be followed and the standards that will be
19 applied when a party seeks permission from the Court to file material under seal. In
20 connection with non-dispositive motions, good cause must be shown to support a
21 filing under seal. See Kamakana v. City and County of Honolulu, 447 F.3d 1172,
22 1176 (9th Cir. 2006), Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th
23 Cir. 2002), Makar-Welbon v. Sony Electronics, Inc., 187 F.R.D. 576, 577 (E.D. Wis.
24 1999) (even stipulated protective orders require good cause showing), and a
25 specific showing of good cause or compelling reasons with proper evidentiary
26 support and legal justification, must be made with respect to Protected Material that
27 a party seeks to file under seal. The parties' mere designation of material under this
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Order does not— without the submission of competent evidence by declaration, establishing that the material sought to be filed under seal qualifies as confidential, privileged, or otherwise protectable—constitute good cause. Further, if a party requests sealing related to a dispositive motion or trial, then compelling reasons, not only good cause, for the sealing must be shown, and the relief sought shall be narrowly tailored to serve the specific interest to be protected. See Pintos v. Pacific Creditors Ass’n., 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal, the party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c) and this Order.

2.3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,”

1 disclosure of which to another Party or Non-Party would create a substantial risk of
2 serious harm that could not be avoided by less restrictive means.

3 2.4 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
4 Items: extremely sensitive “Confidential Information or Items” representing
5 computer code and associated comments and revision histories, formulas,
6 engineering specifications, or schematics—including object code (*i.e.*, computer
7 instructions and data definitions expressed in a form suitable for input to an
8 assembler, compiler, or other translator), microcode, pseudocode, source code
9 listings and descriptions of source code, object code listings and descriptions of
10 object code, register transfer language (“RTL”), firmware, and hardware
11 description language (“HDL”), as well as any and all programmer notes,
12 annotations, and other comments of any type that define or otherwise describe in
13 detail the algorithms or structure related thereto and accompanying the code, source
14 files, make files, intermediate output files, executable files, header files, resource
15 files, binaries, scripts, algorithms, library files, module definition files, map files,
16 object files, linker files, browse info files, and debug files—of software or hardware
17 designs, disclosure of which to another Party or Non-Party would create a
18 substantial risk of serious harm that could not be avoided by less restrictive means.

19 2.5 Counsel (without qualifier): Outside Counsel of Record and House
20 Counsel (as well as their support staff).

21 2.6 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

25 2.7 Disclosure or Discovery Material: all items or information, regardless
26 of the medium or manner in which it is generated, stored, or maintained (including,
27 among other things, testimony, transcripts, and tangible things), that are produced
28 or generated in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who (1) has been retained by a Party or its counsel to
3 serve as an expert witness or as a consultant in this action, (2) is not a past or
4 current employee of a Party or of a Party's competitor, and (3) at the time of
5 retention, is not anticipated to become an employee of a Party or of a Party's
6 competitor.

7 2.8 House Counsel: attorneys who are employees of a party to this action.
8 House Counsel does not include Outside Counsel of Record or any other outside
9 counsel.'

10 2.9 Non-Party: any natural person, partnership, corporation, association, or
11 other legal entity not named as a Party to this action.

12 2.10 Outside Counsel of Record: attorneys who are not employees of a
13 party to this action but are retained to represent or advise a party to this action and
14 have appeared in this action on behalf of that party or are affiliated with a law firm
15 which has appeared on behalf of that party.

16 2.11 Party: any party to this action, including all of its officers, directors,
17 employees, consultants, retained experts, and Outside Counsel of Record (and their
18 support staffs).

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
20 Discovery Material in this action.

21 2.13 Professional Vendors: persons or entities that provide litigation
22 support services (e.g., stenographers, photocopying, videotaping, translating,
23 preparing exhibits or demonstrations, and organizing, storing, or retrieving data in
24 any form or medium) and their employees and subcontractors.

25 2.16 Protected Material: any Disclosure or Discovery Material that is
26 designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'
27 EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE."
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1 2.17 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or
7 compilations of Protected Material; and (3) any testimony, conversations, or
8 presentations by Parties or their Counsel that might reveal Protected Material.
9 However, the protections conferred by this Stipulation and Order do not cover the
10 following information: (a) any information that is in the public domain at the time
11 of disclosure to a Receiving Party or becomes part of the public domain after its
12 disclosure to a Receiving Party as a result of publication not involving a violation
13 of this Order, including becoming part of the public record through trial or
14 otherwise; and (b) any information known to the Receiving Party prior to the
15 disclosure or obtained by the Receiving Party after the disclosure from a source
16 who obtained the information lawfully and under no obligation of confidentiality to
17 the Designating Party. Any use of Protected Material at trial shall be governed by
18 the orders of the trial judge and other applicable authorities. This Order does not
19 govern the use of Protected Material at trial.

20 4. DURATION

21 Even after final disposition of this litigation, except for material has been
22 introduced and publicly disclosed at trial without limitation, the confidentiality
23 obligations imposed by this Order shall remain in effect until a Designating Party
24 agrees otherwise in writing or a court order otherwise directs. Final disposition
25 shall be deemed to be the later of (1) dismissal of all claims and defenses in this
26 action, with or without prejudice; and (2) final judgment herein after the completion
27 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
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1 including the time limits for filing any motions or applications for extension of time
2 pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or Non-Party that designates information or items for protection under
6 this Order must take care to limit any such designation to specific material that
7 qualifies under the appropriate standards. To the extent it is practical to do so, the
8 Designating Party must designate for protection only those parts of material,
9 documents, items, or oral or written communications that qualify – so that other
10 portions of the material, documents, items, or communications for which protection
11 is not warranted are not swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate or routinized designations are prohibited. Designations
13 that are shown to be clearly unjustified or that have been made for an improper
14 purpose (e.g., to unnecessarily encumber the case development process or to
15 impose unnecessary expenses and burdens on other parties) may expose the
16 Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that it
18 designated for protection do not qualify for protection at all or do not qualify for the
19 level of protection initially asserted, that Designating Party must promptly notify all
20 other parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in
22 this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise
23 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
24 under this Order must be clearly so designated before the material is disclosed or
25 produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents,
28 but excluding transcripts of depositions or other pretrial or trial proceedings), that

1 the Producing Party affix the legend “CONFIDENTIAL,” “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
3 CONFIDENTIAL – SOURCE CODE” to each page that contains protected
4 material. To the extent it is practical to do so, if only a portion or portions of the
5 material on a page qualifies for protection, the Producing Party also must clearly
6 identify the protected portion(s) (e.g., by making appropriate markings in the
7 margins) and must specify, for each portion, the level of protection being asserted.

8 A Party or Non-Party that makes original documents or materials available
9 for inspection need not designate them for protection until after the inspecting Party
10 has indicated which material it would like copied and produced. During the
11 inspection and before the designation, all of the material made available for
12 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY.” After the inspecting Party has identified the documents it wants copied
14 and produced, the Producing Party must determine which documents, or portions
15 thereof, qualify for protection under this Order. Then, before producing the
16 specified documents, the Producing Party must affix the appropriate legend
17 (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE) to each page that
19 contains Protected Material. To the extent it is practical to do so, if only a portion
20 or portions of the material on a page qualifies for protection, the Producing Party
21 also must clearly identify the protected portion(s) (e.g., by making appropriate
22 markings in the margins) and must specify, for each portion, the level of protection
23 being asserted.

24 (b) for testimony given in depositions, that the Designating Party identify on
25 the record, before the close of the deposition, hearing, or other proceeding, all
26 protected testimony and specify the level of protection being asserted. When it is
27 impractical to identify separately each portion of testimony that is entitled to
28 protection and it appears that substantial portions of the testimony may qualify for

1 protection, the Designating Party may invoke on the record (before the deposition,
2 hearing, or other proceeding is concluded) a right to have up to 30 days to identify
3 the specific portions of the testimony as to which protection is sought and to specify
4 the level of protection being asserted. Only those portions of the testimony that are
5 appropriately designated for protection within the 30 days shall be covered by the
6 provisions of this Stipulated Protective Order. Alternatively, a Designating Party
7 may specify, at the deposition or up to 30 days afterwards if that period is properly
8 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

10 Parties shall give the other parties notice if they reasonably expect a
11 deposition, hearing or other proceeding to include Protected Material so that the
12 other parties can ensure that only authorized individuals who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
14 proceedings. The use of a document as an exhibit at a deposition shall not in any
15 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
16 – ATTORNEYS’ EYES ONLY.”

17 Transcripts containing Protected Material shall have an obvious legend on
18 the title page that the transcript contains Protected Material, and the title page shall
19 be followed by a list of all pages (including line numbers as appropriate) that have
20 been designated as Protected Material and the level of protection being asserted by
21 the Designating Party. The Designating Party shall inform the court reporter of
22 these requirements. Any transcript that is prepared before the expiration of a 30-
23 day period for designation shall be treated during that period as if it had been
24 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its
25 entirety unless otherwise agreed. After the expiration of that period, the transcript
26 shall be treated only as actually designated.

27 (c) for information produced in some form other than documentary and for
28 any other tangible items, that the Producing Party affix in a prominent place on the

1 exterior of the container or containers in which the information or item is stored the
2 legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
3 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or
4 portions of the information or item warrant protection, the Producing Party, to the
5 extent practicable, shall identify the protected portion(s) and specify the level of
6 protection being asserted.

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive
9 the Designating Party’s right to secure protection under this Order for such
10 material. Upon timely correction of a designation, the Receiving Party must make
11 reasonable efforts to assure that the material is treated in accordance with the
12 provisions of this Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court’s
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process under Local Rule 37-1 et seq.

19 6.3 Judicial Intervention. Any challenge submitted to the Court shall be
20 via a joint stipulation pursuant to Local Rule 37-2.

21 The burden of persuasion in any such challenge proceeding shall be on the
22 Designating Party. Frivolous challenges and those made for an improper purpose
23 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
24 expose the Challenging Party to sanctions. Unless the Designating Party has
25 waived the confidentiality designation by failing to file a motion to retain
26 confidentiality as described above, all parties shall continue to afford the material in
27 question the level of protection to which it is entitled under the Producing Party’s
28 designation until the Court rules on the challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation.
5 Specifically, all Protected Material shall be used solely for this case or any related
6 appellate proceeding, and not for any other purpose whatsoever, including without
7 limitation any other litigation, patent prosecution or acquisition, patent
8 reexamination or reissue proceedings, or any business or competitive purpose or
9 function, unless otherwise agreed to by the Parties or ordered by the Court.
10 Protected Material shall not be distributed, disclosed or made available to anyone
11 except as expressly provided in this Order.

12 Such Protected Material may be disclosed only to the categories of persons
13 and under the conditions described in this Order. When the litigation has been
14 terminated, a Receiving Party must comply with the provisions of Section 14 below
15 (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons
18 authorized under this Order.

19 Any party receiving Protected Material shall take appropriate technical and
20 organizational security measures to protect against risks such as unauthorized
21 access presented when processing the Protected Material. Any person acting under
22 the authority of a Receiving Party, including a data processor, must not process the
23 data except on instructions from the Receiving Party. Any party receiving
24 Protected Material shall have in place procedures so that any third party it
25 authorizes to have access to the Protected Material, including processors, will
26 respect and maintain the confidentiality and security of the Protected Material.

27 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
28 otherwise ordered by the Court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated

2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
4 employees of said Outside Counsel of Record to whom it is reasonably necessary to
5 disclose the information for this litigation;

6 (b) the officers, directors, and employees (including House Counsel) of the
7 Receiving Party to whom disclosure is reasonably necessary for this litigation;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom
9 disclosure is reasonably necessary for this litigation and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (d) the Court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, and
13 Professional Vendors to whom disclosure is reasonably necessary for this litigation
14 and who have signed the “Acknowledgment and Agreement to Be Bound”
15 (Exhibit A);

16 (f) during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary, unless otherwise agreed by the Designating Party or ordered
18 by the Court. Pages of transcribed deposition testimony or exhibits to depositions
19 that reveal Protected Material must be separately bound by the court reporter and
20 may not be disclosed to anyone except as permitted under this Stipulated Protective
21 Order;

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information; and

24 (h) any mediator or settlement officer, and their supporting personnel,
25 mutually agreed upon by any of the parties engaged in settlement discussions.

26 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
27 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted
28 in writing by the Designating Party, a Receiving Party may disclose any

1 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
 2 EYES ONLY” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
 4 employees of said Outside Counsel of Record to whom it is reasonably necessary to
 5 disclose the information for this litigation;

6 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
 7 necessary for this litigation, (2) who have signed the “Acknowledgment and
 8 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth
 9 in Section 7.5, below, have been followed;

10 (c) the Court and its personnel;

11 (d) court reporters and their staff, professional jury or trial consultants, and
 12 Professional Vendors to whom disclosure is reasonably necessary for this litigation;

13 (e) the author or recipient of a document containing the information or a
 14 custodian or other person who otherwise possessed or knew the information; and

15 (f) any mediator or settlement officer, and their supporting personnel,
 16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 7.4 Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE”

18 Information or Items. A party or non-party may designate Source Code as
 19 “HIGHLY CONFIDENTIAL – SOURCE CODE” if it comprises or includes
 20 confidential, proprietary, or trade secret Source Code. Unless otherwise ordered by
 21 the Court or permitted in writing by the Designating Party, Source Code designated
 22 as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to the
 23 following provisions:

24 (a) Protected Material designated as “HIGHLY CONFIDENTIAL –
 25 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY
 26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information and may be
 27 disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
 28

1 ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in
2 Sections 7.3 and 7.5;

3 (b) Any Source Code produced in discovery shall be made available for
4 inspection, in a format allowing it to be reasonably reviewed and searched, during
5 normal business hours or at other mutually agreeable times, at an office of the
6 Producing Party's counsel or another mutually agreed upon location. Unless
7 otherwise agreed to by the Parties, Source Code produced by Nikon will be made
8 available in Nikon's outside counsel's offices in Los Angeles. Source code
9 produced by RED will be made available in RED's outside counsel's offices in San
10 Diego. The Source Code shall be made available for inspection on a secured
11 computer in a secured room without Internet access or network access to other
12 computers, and the Receiving Party shall not copy, remove, or otherwise transfer
13 any portion of the Source Code onto any recordable media or recordable device.
14 The Producing Party may visually monitor the activities of the Receiving Party's
15 representatives during any Source Code review from outside the review room, but
16 only to ensure that there is no unauthorized recording, copying, or transmission of
17 the Source Code. Such monitoring shall not entail review of any work product
18 generated by the Receiving Party, *e.g.*, monitoring the screen of the secure
19 computer, monitoring any surface reflecting any notes or work product of the
20 Receiving Party, or monitoring the key strokes of the Receiving Party;

21 (c) The Receiving Party may request that commercially available software
22 tools for viewing and searching Source Code be installed on the secured PC. The
23 Receiving party must provide the Producing Party a CD, DVD, or other media
24 containing such software tools, or links for a download at least 4 days in advance of
25 the inspection. The Receiving Party shall be responsible for providing a license for
26 the use of the review and search tools;

27 (d) The Receiving Party may request paper copies of limited portions of
28 Source Code that are reasonably necessary for the preparation of court filings,

1 pleadings, expert reports, or other papers, or for deposition or trial, but shall not
2 request paper copies for the purposes of reviewing the Source Code other than
3 electronically as set forth in Subsection (b) in the first instance. The Producing
4 Party shall provide all such Source Code in paper form including Bates numbers
5 and the label “HIGHLY CONFIDENTIAL – SOURCE CODE.” Any request for
6 paper copies that consists of more than twenty (20) continuous pages of Source
7 Code shall be presumed to be excessive and the burden shall be on the Receiving
8 Party to demonstrate the need for such a request. The Producing Party may
9 challenge the amount of Source Code requested in hard copy form pursuant to the
10 dispute resolution procedure and timeframes set forth in Section 6 and Local Rule
11 37-1 et seq. whereby the Producing Party is the “Challenging Party” and Receiving
12 Party is the “Designating Party” for purposes of dispute resolution. As a general
13 matter, no more than an aggregate total of 2,000 pages of Source Code should be
14 printed during the duration of the case. If the Receiving Party wishes to print more
15 pages beyond this page limit, the parties shall meet and confer in good faith and the
16 Producing Party shall not unreasonably withhold permission to the Receiving Party
17 to exceed the page limit.

18 (e) The Receiving Party shall maintain a record of any individual who has
19 inspected any portion of the Source Code in electronic or paper form. The
20 Receiving Party shall maintain all paper copies of any printed portions of the
21 Source Code in a secured, locked area. Similarly, the Receiving Party shall
22 maintain derivative materials created using Source Code, such as any notes of an
23 Expert, in a secured, locked area. The Receiving Party shall not create any
24 electronic or other images of the paper copies and shall not convert any of the
25 information contained in the paper copies into any electronic format. The
26 Receiving Party shall only make additional paper copies if such additional copies
27 are (1) necessary to prepare court filings, pleadings, or other papers (including a
28 testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise

1 necessary for the preparation of its case. Any paper copies used during a deposition
 2 shall be retrieved by the Producing Party at the end of each day and must not be
 3 given to or left with a court reporter or any other individual.

4 7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY
 5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
 6 CONFIDENTIAL – SOURCE CODE” Information or Items to Experts.

7 (a)(1) Unless otherwise ordered by the Court or agreed to in writing by the
 8 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
 9 Order) any information or item that has been designated “HIGHLY
 10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
 11 CONFIDENTIAL – SOURCE CODE” pursuant to Section 7.3(b) first must make a
 12 written request to the Designating Party that (1) identifies the general categories of
 13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
 14 CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks
 15 permission to disclose to the Expert, (2) sets forth the full name of the Expert and
 16 the city and state of his or her primary residence, and (3) attaches a copy of the
 17 Expert’s current resume or CV, (4) identifies the Expert’s current employer(s),
 18 (5) identifies each person or entity from whom the Expert has received
 19 compensation or funding for work in his or her areas of expertise or to whom the
 20 expert has provided professional services, including in connection with a litigation,
 21 at any time during the preceding five years,¹ and (6) identifies (by name and
 22 number of the case, filing date, and location of court) any litigation in connection
 23 with which the Expert has offered expert testimony, including through a
 24

25 _____
 26 ¹ If the Expert believes any of this information is subject to a confidentiality
 27 obligation to a third-party, then the Expert should provide whatever information the
 28 Expert believes can be disclosed without violating any confidentiality agreements,
 and the Party seeking to disclose to the Expert shall be available to meet and confer
 with the Designating Party regarding any such engagement.

1 declaration, report, or testimony at a deposition or trial, during the preceding five
2 years.

3 (b) A Party that makes a request and provides the information specified in the
4 preceding respective paragraphs may disclose the subject Protected Material to the
5 identified Designated House Counsel or Expert unless, within 14 days of delivering
6 the request, the Party receives a written objection from the Designating Party. Any
7 such objection must set forth in detail the grounds on which it is based.

8 (c) A Party that receives a timely written objection must meet and confer
9 with the Designating Party (through direct voice to voice dialogue) to try to resolve
10 the matter by agreement within seven days of the written objection in accordance
11 with Civil Local Rule 37-1. If no agreement is reached, the Party seeking to make
12 the disclosure to Designated House Counsel or the Expert may proceed as provided
13 in Civil Local Rule 37-2 (and in compliance with Civil Local Rule 79-5, if
14 applicable). Any motion and/or joint stipulation must describe the circumstances
15 with specificity, set forth in detail the reasons why the disclosure to the Expert is
16 reasonably necessary, assess the risk of harm that the disclosure would entail, and
17 suggest any additional means that could be used to reduce that risk. In addition,
18 any such motion and/or joint stipulation must be accompanied by a competent
19 declaration describing the parties' efforts to resolve the matter by agreement (*i.e.*,
20 the extent and the content of the meet and confer discussions) and setting forth the
21 reasons advanced by the Designating Party for its refusal to approve the disclosure.

22 In any such proceeding, the Party opposing disclosure to the Expert shall
23 bear the burden of proving that the risk of harm that the disclosure would entail
24 (under the safeguards proposed) outweighs the Receiving Party's need to disclose
25 the Protected Material to its Expert.

26 7.6 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
27 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items
28 to Officers, Directors, and Employees (including House Counsel) of the Receiving

1 Party. Disclosure of information designated “HIGHLY CONFIDENTIAL –
 2 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
 3 CODE” to officers, directors, and employees (including House Counsel) of the
 4 Receiving Party is prohibited, unless expressly permitted in writing by the
 5 Designating Party.

6 8. DISCOVERY FROM EXPERTS OR CONSULTANTS

7 (a) No discovery can be taken from any non- testifying expert except to the
 8 extent that such non-testifying expert has provided information, opinions, or other
 9 materials to a testifying expert relied upon by that testifying expert in forming his
 10 or her final report(s), trial, and/or deposition testimony or any opinion in this case.

11 (b) Nothing in Protective Order, include Subsections 8(a)–(e), shall alter or
 12 change in any way the requirements in Section 7.4 regarding Source Code, and
 13 Section 7.4 shall control in the event of any conflict.

14 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED 15 PRODUCED IN OTHER LITIGATION

16 If a Party is served with a subpoena or a court order issued in other litigation
 17 that compels disclosure of any information or items designated in this action as
 18 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 19 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE,” that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification shall
 21 include a copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order to
 23 issue in the other litigation that some or all of the material covered by the subpoena
 24 or order is subject to this Protective Order. Such notification shall include a copy
 25 of this Stipulated Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be pursued
 27 by the Designating Party whose Protected Material may be affected.
 28

1 If the Designating Party timely seeks a protective order, the Party served with
 2 the subpoena or court order shall not produce any information designated in this
 3 action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
 4 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a
 5 determination by the Court from which the subpoena or order issued, unless the
 6 Party has obtained the Designating Party’s permission. The Designating Party shall
 7 bear the burden and expense of seeking protection in that court of its confidential
 8 material – and nothing in these provisions should be construed as authorizing or
 9 encouraging a Receiving Party in this action to disobey a lawful directive from
 10 another court.

11 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 12 PRODUCED IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a
 14 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
 15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
 16 CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties
 17 in connection with this litigation is protected by the remedies and relief provided by
 18 this Order. Nothing in these provisions should be construed as prohibiting a Non-
 19 Party from seeking additional protections.

20 (b) In the event that a Party intends to disclose a Non-Party’s confidential
 21 information in its possession, and the Party is subject to confidentiality obligations
 22 to the Non-Party, then the Party shall within 7 days of the Party becoming aware of
 23 the confidentiality obligations:

24 1. promptly notify in writing the Requesting Party and the Non-Party that
 25 some or all of the information requested is subject to a confidentiality agreement
 26 with a Non-Party;
 27
 28

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation and a reasonably specific description of the information the Party intends to disclose; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Party may produce the Non-Party's confidential information. If the Non-Party timely seeks a protective order within 14 days of receiving the notice, the Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal

1 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
2 whatever procedure may be established in an e-discovery order that provides for
3 production without prior privilege review. Pursuant to Federal Rule of Evidence
4 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
5 of a communication or information covered by the attorney-client privilege or work
6 product protection, the parties may incorporate their agreement in the stipulated
7 protective order submitted to the Court.

8 Upon a request from any Producing Party who has inadvertently produced
9 Discovery Material that it believes is privileged and/or protected, each Receiving
10 Party shall immediately return such Protected Material or Discovery Material and
11 all copies to the Producing Party, except for any pages containing privileged
12 markings by the Receiving Party which shall instead be destroyed and certified as
13 such by the Receiving Party to the Producing Party.

14 If the Receiving Party has disclosed the information to others before being
15 notified of the claim of privilege or protection, the Receiving Party must take
16 reasonable steps to retrieve and return or destroy the disclosed information. No use
17 shall be made of such documents or information during deposition or at trial, nor
18 shall such documents or information be shown to anyone after the request that they
19 be returned. If a claim is disputed, the Receiving Party shall not use or disclose a
20 document or information for which a claim of privilege or immunity is made
21 pursuant to this paragraph for any purpose until the matter is resolved by agreement
22 of the Parties or by a decision of this Court.

23 Nothing in this Protective Order shall require disclosure of material that a
24 Party contends is protected from disclosure by attorney-client privilege or the
25 attorney work-product immunity or any other applicable form of immunity. This
26 shall not preclude any Party from moving the Court for an order directing the
27 disclosure of such material.
28

1 13. MISCELLANEOUS

2 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 13.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in
7 this Stipulated Protective Order. Similarly, no Party waives any right to object on
8 any ground to use in evidence of any of the material covered by this Protective
9 Order.

10 13.3 Filing Protected Material. Without written permission from the
11 Designating Party or a court order secured after appropriate notice to all interested
12 persons, a Party may not file in the public record in this action any Protected
13 Material. A Party that seeks to file under seal any Protected Material must comply
14 with Civil Local Rule 79-5. Protected Material may only be filed under seal
15 pursuant to a court order authorizing the sealing of the specific Protected Material
16 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
17 request establishing that the Protected Material at issue is privileged, protectable as
18 a trade secret, or otherwise entitled to protection under the law. If a Receiving
19 Party's request to file Protected Material under seal pursuant to Civil Local Rule
20 79-5 is denied by the Court, then the Receiving Party may file the Protected
21 Material in the public record pursuant to Civil Local Rule 79-5 unless otherwise
22 instructed by the Court.

23 14. FINAL DISPOSITION

24 Within 60 days after the final disposition of this action, as defined in
25 Section 4, each Receiving Party must return all Protected Material to the Producing
26 Party or destroy such material. As used in this subdivision, "all Protected Material"
27 includes all copies, abstracts, compilations, summaries, and any other format
28 reproducing or capturing any of the Protected Material. Whether the Protected

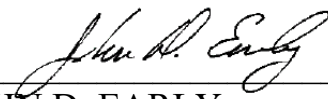
1 Material is returned or destroyed, the Receiving Party must submit a written
2 certification to the Producing Party (and, if not the same person or entity, to the
3 Designating Party) by the 60-day deadline that (1) identifies (by category, where
4 appropriate) all the Protected Material that was returned or destroyed and
5 (2) affirms that the Receiving Party has not retained any copies, abstracts,
6 compilations, summaries or any other format reproducing or capturing any of the
7 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
8 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
9 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
10 reports, attorney work product, and consultant and expert work product, even if
11 such materials contain Protected Material. Any such archival copies that contain or
12 constitute Protected Material remain subject to this Protective Order as set forth in
13 Section 4 (DURATION).

14 15. VIOLATIONS

15 Any willful violation of this Order may be punished by civil contempt
16 proceedings, financial or evidentiary sanctions, reference to disciplinary authorities,
17 or other appropriate action at the discretion of the Court.

18
19 For good cause shown, IT IS SO ORDERED.

20
21 DATED: 10/25/2022



JOHN D. EARLY
United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on October 25, 2022, in the case of *RED.com, LLC v. Nikon Corporation and Nikon Inc.*, Case No. 8:22-cv-01048-FWS (JDEx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of

[print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

1 Printed name: _____

2 Signature: _____

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